

25
IN THE**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1943.

No. **273**

In the Matter of I. WALTER MECKLEY,
Petitioner,

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT**

and

BRIEF IN SUPPORT THEREOF.

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SUBJECT INDEX.

PETITION	Page
Statement of Matter Involved	1
Basis of Jurisdiction	4
Questions Presented	4-5
Reasons Relied Upon For Allowance of Writ	5
BRIEF IN SUPPORT OF PETITION	
Opinions Below	7
Statement of the Case	7
Specifications of Error	7-8
Argument	8
Conclusion	14

TABLE OF CASES.

Blim v. United States, 68 F. 2d 484	9
Camarota v. United States, 111 F. 2d 243	13
Ex Parte Hudgings, 249 U. S. 378	14
In Re Cantor, 215 F. 61	11
In Re Eskay, 122 F. 2d 819	12
Sona v. Aluminum Castings Co., 214 F. 936	10
Terminal Railroad Ass'n. v. United States, 266 U. S., 17	14
United States v. Dachis, 36 F. 2d 601	10
United States v. French, 9 F. Supp. 30	10
United States v. Moore, 294 F. 852	11

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PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT.

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioner, I. WALTER MECKLEY, respectfully represents:

I. SUMMARY STATEMENT OF MATTER INVOLVED.

On May 7, 1943, the Grand Jury for the District Court of the United States for the Middle District of Pennsylvania made a presentment against I. Walter Meckley, the petitioner herein.

Said presentment (R. 2a) charged that on or about the 7th day of December, 1942, the Grand Jurors at Harrisburg, Pennsylvania, at the December 1942 term of said

Court, undertook an inquiry into the activities of persons, companies, corporations, groups and associations whose names were then unknown to the Grand Jurors, relating to alleged frauds committed against the Government in connection with the construction of the Naval Supply Depot located at Mechanicsburg, Pennsylvania (R. 3a).

Said presentment also charged that on or about January 26, 1942, the petitioner, without having submitted written bids or proposals, was given a purchase order by Brann & Stuart, Inc., the general contractor in charge of construction, for 35,000 tons of slag and on subsequent dates said original purchase order was renewed and extended to include the purchase of additional tonnage of slag (R. 3a).

Said presentment also charged that on January 13, 1943 and subsequent thereto the petitioner, after being duly sworn before said Grand Jury, testified to having withdrawn by eight separate checks, each payable to himself, amounts totalling \$38,125.48 from "his bank in hundred dollar bills and which he placed in his pocket, but that the said I. Walter Meckley will not disclose to the Grand Jury what he did with these specific withdrawals and said that he doesn't remember whether he went to the races with the money, whether he won or lost at each race, or whether he put it in his lock box" (R. 5a).

Said presentment also charged, without specification, that the petitioner has given obstructive, evasive, perjurious and contumacious answers to questions propounded to him before the Grand Jury, has deliberately, wilfully and contumaciously obstructed the investigation "in uttering answers which were half truths, which impeded, delayed and hampered the instant investigation, which sought to shut off and block the instant inquiry; in giving answers which were shifts and subterfuges instead of truths; in blocking the search for truth by answering with the first preposterous fancy which he chose to put forward;

in contumaciously parrying with the examiner and Grand Jurors; and in otherwise failing and refusing truthfully to answer" the questions put to him (R. 6a-7a). A copy of the testimony before the Grand Jury was filed with the presentment (R. 1a).

On the basis of said presentment the District Court of the United States for the Middle District of Pennsylvania on May 7, 1943, entered a rule to show cause why the petitioner should not be adjudged in contempt of Court and said rule was made returnable on May 8, 1943 (R. 75a).

On May 8, 1943, the petitioner filed an answer to said rule denying that he had given obstructive, evasive, perjurious or contumacious answers or that he deliberately, wilfully or contumaciously obstructed the investigation of the Grand Jury (R. 76a).

On May 8, 1943, a hearing was had and argument heard by the said District Court, the Honorable Albert L. Watson presiding. At said hearing the only testimony offered by the Government was in respect to the charge in the presentment relating to the petitioner's testimony concerning who dictated the proposal for the slag. No testimony was taken concerning either the other specific charge in the presentment or the general charge therein on which the Circuit Court relied to sustain the conviction. The District Court in its opinion adjudging the petitioner guilty of contempt, completely disregarded the oral testimony offered by the Government at the hearing and the charge of the presentment relative thereto (R. 79a).

On May 26, 1943, said District Court filed an opinion adjudging the petitioner guilty of contempt and made absolute the rule granted on May 7, 1943 (R. 86a).

On May 26, 1943, the District Court sentenced the petitioner to serve the term of three months imprisonment in the Dauphin County Jail at Harrisburg, Pennsylvania (R. 87a).

On May 27, 1943, the petitioner presented to said District Court his petition for allowance of an appeal and on the same day filed a notice of appeal, both under the civil and criminal rules (R. 89a).

On May 28, 1943, an order was made by the said District Court allowing the appeal (R. 90a).

After argument on appeal the Circuit Court of Appeals in an opinion filed July 22, 1943, affirmed the judgment of the District Court (R. 215a).

II. BASIS OF JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347).

III. QUESTIONS PRESENTED.

1. May a witness before a grand jury be adjudged guilty of contempt upon general charges vaguely and indefinitely stated?

2. Is the Court warranted in adjudging a witness before a grand jury guilty of contempt on the ground that the witness had testified falsely, evasively, obstructively and contumaciously when no extraneous evidence was produced to show that the witness had not testified truthfully and his whole story was not inherently improbable or necessarily unreasonable?

3. Is the Court warranted in adjudging a witness before a grand jury guilty of contempt when said witness under examination as to what he did with certain withdrawals of cash from his bank gives an accounting of the disposition he made of said withdrawals in the absence of

any extraneous evidence to show that said witness had not testified truthfully and his accounting is not inherently improbable or necessarily unreasonable?

4. Where a witness before a grand jury is charged generally with having wilfully, deliberately and contumaciously obstructed the process of the Court, is the Circuit Court of Appeals warranted in affirming a judgment of contempt by concluding that the defendant's guilt appears from the whole of his testimony without specifying in what manner the defendant had obstructed the investigation and no where in the record does it appear that the defendant had obstructed the investigation?

IV. REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

The discretionary power of this Court to grant the writ requested is invoked because the Circuit Court of Appeals for the Third Circuit:

(1) Has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision; (See "Questions Presented", *supra*.)

(2) has decided an important question of Federal law which has not been but should be settled by this Court. (See "Questions Presented", *supra*.)

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein

named, a full and complete transcript of the record and all proceedings herein; and that the judgment of the Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

WILLIAM A. GRAY,
Counsel for Petitioner.

SAMUEL HANDLER,
EARL HANDLER,
Of Counsel.